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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PURVA R. RAJKOTIA

Appeal 2007-1660
Application 10/028,571[1]
Technology Center 2600

Decided: February 8, 2008

Before ALLEN R. MACDONALD, ROBERT E. NAPPI, and
SCOTT R. BOALICK, *Administrative Patent Judges*.

BOALICK, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the final rejection of claims 31-60, all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Application filed December 20, 2001. The real party in interest is Samsung Electronics Co., Ltd.

STATEMENT OF THE CASE

Appellant's invention relates to a system and method for locating a wireless station within a wireless network.

Claim 31 is exemplary:

31. For use in wireless network communications system comprising a plurality of base stations and a plurality of mobile stations, an apparatus for determining a distance from a base station to a mobile station, said apparatus comprising:

a distance unit associated with said base station wherein said distance unit is capable of

obtaining a two way travel time, wherein said two way travel time is a time of travel for a range signal to travel from said base station to said mobile station and to travel from said mobile station to said base station,

adjusting a value of said two way travel time to correct for signal conditions causing a time difference in arrival of said range signal at said base station,

determining a one way travel time D from:

D = 1/2 [(*adjusted two way travel time*) - (*random backoff*)]

wherein said random backoff is a time value of a chip length of a random backoff parameter of said mobile station, and

multiplying said one way travel time D by the speed of light to obtain said distance from said base station to said mobile station.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Innes	US 6,061,565	May 9, 2000
Bevan	US 6,489,923 B1	Dec. 3, 2002

Admitted Prior Art, page 17, line 15 to page 18, line 22 of the present application (APA).

Claims 31-60 stand rejected under 35 U.S.C. § 103(a) as being obvious over Innes, the Admitted Prior Art (APA), and Bevan.

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments that Appellant did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).[2]

ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). That is, given the teachings of the prior art, has Appellant shown that the differences between the claims and the prior art are sufficient to render the claimed subject matter unobvious to a person skilled in the art at the time the invention was made?

FINDINGS OF FACT

The record supports the following findings of fact (FF) by substantial evidence.

1. Innes describes a method for locating a mobile station of a mobile radio system. (Col. 1, ll. 4, 32-55.) To locate the position of a mobile station

[2] Except as will be noted in this opinion, Appellant has not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group. In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See* 37 C.F.R. § 41.37(c)(1)(vii).

(MS), Innes teaches that "the distance of the mobile station from a base transceiver station is determined, or the distances of the mobile station from at least two base transceiver stations are determined and the position is found by triangulation." (Abstract.) Innes also teaches that "[i]n a GSM-type system, there is a predetermined known response delay between a particular signal received by the mobile station from the base transceiver station and a particular response transmitted from the mobile station to the base transceiver station." (Abstract.) Therefore, the distances can "be determined from the response delay and a measured period between transmission of the particular signal and reception of the particular response." (Abstract.) In addition to GSM (Global System for Mobile communications), the teachings of Innes are applicable to other types of mobile cellular radio systems, such as CDMA (Code Division Multiple Access). (Col. 5, ll. 63-66.)

2. Innes teaches that a base transceiver station (BTS) 26 registers a time reference t0 when it begins a transmission to the mobile station (MS) 16. (Col. 3, ll. 63-65; Figs. 1, 3.) The transmission is received by MS 16 at a time t1 that is delayed from time t0. (Col. 3, ll. 65-67; Fig. 3.) The MS 16 then communicates to the BTS 26 at a time that is synchronized to the reception of the transmission at t2 and delayed by a known fixed delay period σ. (Col. 4, ll. 2-8; Fig. 3.) The transmission from the MS 16 is received by the BTS 26 at time t3, which is registered by the BTS 26. (Col. 4, ll. 8-11; Fig. 3.) The BTS 26 can calculate the distance to the MS 16 using the round trip time (t3-t0) minus the known fixed delay period σ. (Col. 4, ll. 11-15.)

3. Innes teaches that a message monitoring and substitution unit (MMSU) 36 is placed in the interface 28 between each BTS 26 in the mobile network and its base station controller (BSC) 24. (Col. 4, ll. 43-47; Fig. 4.) The MMSUs 36 are controlled by a position location controller (PLC) 38. (Col. 4, ll. 47-48; Fig. 4.) "The PLC 38 and MMSU 36 may be integrated with, or separate from, the BTS 26 and the BSC 24." (Col. 4, ll. 48-50.) The MMSUs 36 "collect the distance information from the BTSs 26 and supply it to the PLC 38 where it is processed in order to determine the location of each mobile station under analysis." (Col. 4, ll. 60-63.) Innes teaches how a distance measurement may be carried out using three BTSs to determine the location of a mobile system. (Col. 4, l. 63 to col. 5, l. 29; Figs. 3-5.)

4. The APA states that the random backoff parameter used to calculate a one way travel time for a signal to travel from a base station to a mobile station in equation (1) of the Specification "is specified in the IS-95 Code Division Multiple Access (CDMA) standard for CDMA networks (the "Standard")." (Spec. 17:4-17.) "The random backoff parameter for mobile station MS1 represents a time duration after which mobile station MS1 starts a transmission." (Spec. 18:1-3.) The "mobile station may have a random backoff parameter with a chip length value of zero (0) up to a chip length value of five hundred eleven (511)." (Spec. 18:5-7.) Thus, "[t]he random backoff parameter of the mobile station represents the time offset after which the mobile station starts a transmission." (Spec. 19:13-15.) In addition, "[t]he mobile station continually informs the base station of the current value of the random

backoff parameter for the mobile station." (Spec. 19:18-20.)

5. Bevan describes "a method and apparatus for locating the position of a mobile station (MS) in a mobile telecommunications system." (Col. 1, ll. 7-9.) Bevan teaches that a base transceiver station (BTS) can "locate the position of a MS by measuring the round-trip delay of a signal sent from the BTS to the MS and back (i.e. the elapsed time between transmission of a signal from the BTS and reception of the MS's response) to evaluate the distance from the BTS to the MS, and by estimating the angular bearing from the BTS to the MS." (Col. 1, ll. 24-30.) Bevan teaches that there are "several mechanisms by which we can potentially obtain errors in attempting to estimate the angle of arrival and range of received signal sources," (col. 1, ll. 42-44) including "[e]rror mechanisms in measuring signal round-trip delay (RTD) . . . Multipath (angle and delay spread) [and] Doppler" (col. 1, ll. 45-49).

6. An object of Bevan is "to reduce errors due to Doppler frequency shift and spread, and carrier frequency offset, in particular relating to potential errors due to MS motion in a cellular telecommunications system." (Col. 1, ll. 54-58.) The invention of Bevan "may enable a direction and range estimation system which meets the FCC E911 mandate." (Col. 3, ll. 3-5.) "In the embodiment, we combine direction finding (DF) and round trip delay (RTD) techniques to evaluate the direction or bearing from a BTS to a MS and the distance from the BTS to the MS." (Col. 3, ll. 51-54.) The techniques taught by Bevan "find particular application to direction and/or range finding in cellular radio

telecommunications systems." (Col. 2, ll. 31-33.) The described embodiments of Bevan "relate to a code division multiple access (CDMA) system." (Col. 3, ll. 58-59.)

PRINCIPLES OF LAW

All timely filed evidence and properly presented arguments are considered by the Board in resolving an obviousness issue on appeal. *See In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984).

In the examination of a patent application, the Examiner bears the initial burden of showing a prima facie case of unpatentability. *Id.* at 1472. When that burden is met, the burden then shifts to the applicant to rebut. *Id.*; *see also In re Harris*, 409 F.3d 1339, 1343-44 (Fed. Cir. 2005) (finding rebuttal evidence unpersuasive). If the applicant produces rebuttal evidence of adequate weight, the prima facie case of unpatentability is dissipated. *In re Piasecki*, 745 F.2d at 1472. Thereafter, patentability is determined in view of the entire record. *Id.* However, on appeal to the Board it is an appellant's burden to establish that the Examiner did not sustain the necessary burden and to show that the Examiner erred. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [for obviousness] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

In *KSR*, the Supreme Court reaffirmed that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 1739. The Court explained that:

> [o]ften, it will be necessary . . . to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

Id. at 1740-41. The Court noted that "[t]o facilitate review, this analysis should be made explicit." *Id.* at 1741 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness")). However, "the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.*

The Court noted that "[i]n many fields it may be that there is little discussion of obvious techniques or combinations, and it often may be the case that market demand, rather than scientific literature, will drive design trends." *KSR*, 127 S. Ct. at 1741. "Under the correct analysis, any need or

problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." *Id* at 1742. The Court also noted that "[c]ommon sense teaches . . . that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle." *Id.*. "A person of ordinary skill is also a person of ordinary creativity, not an automaton." *Id.*

During examination of a patent application, a claim is given its broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969). "[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.,* 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted). The "ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Id.* at 1313.

ANALYSIS

Appellant contends that the Examiner erred in rejecting claims 31-60 as being obvious over Innes, the APA, and Bevan. Reviewing the findings of fact and documents of record, we do not agree. In particular, we find that the Appellant has not shown that the Examiner failed to make a prima facie showing of obviousness. Appellant failed to meet the burden of overcoming that prima facie showing.

Independent Claim 31

Regarding claim 31, Appellant argues that the applied references do not teach or suggest a distance unit, as claimed. (App. Br. 9-14; Reply Br. 2-4.) In particular, Appellant argues that the applied references do not teach or suggest either (1) a distance unit that adjusts a value of the two way travel time to correct for signal conditions causing a time difference in arrival of the range signal at the base station or (2) a distance unit that determines a one way travel time by subtracting a random backoff parameter from the adjusted two way travel time and dividing that result by two. (App. Br. 11-14; Reply Br. 2-4.) We do not agree.

Initially, we note that the plain language of claim 31 does not require the distance unit to actually adjust a value of the two way travel time or determine a one way travel time by subtracting a random backoff parameter. Instead, claim 31 merely requires that the distance unit be "capable of" performing these acts.

The Examiner found that Innes discloses a distance unit (MMSU 36 and/or PLC 38) associated with the base station that is capable of determining a one way travel time of a signal from the base station to the mobile station. (Ans. 4-5; FF 1-3.) Appellant argues that, because the MMSUs 36 collect distance information from the BTSs 26 and supply the information to the PLC 38, "this clearly indicates that distance estimation or calculation is not made by either the MMSUs 36 or the PLC 38. Thus, neither MMSU 36 or PLC 38, alone or in combination, provide the distance unit required by Claim 31." (App. Br. 10.)

However, as the Examiner correctly points out, claim 31 has been rejected over a combination of references, not Innes alone. (Ans. 18.) In addition, the Examiner correctly found that the MMSU or PLC taught by

Innes would be capable of performing the distance determination recited by claim 31. (Ans. 18.) Appellant has not presented evidence, nor do we find any, that the MMSU or PLC would not be capable of performing the determination of distance recited by claim 31 or that using the MMSU or PLC to perform the distance determination would have been beyond the level of ordinary skill in the art. Moreover, as Appellant admits (App. Br. 10), the determination of distance is referenced generally in relation to BTS 26. If, as Appellant appears to argue (App. Br. 10), the distance determination is performed by a component of the base station (BTS 26), we find nothing to prevent the distance unit, which is required to be "associated with" the base station, from being interpreted to include such a component of the base station.

Appellant argues that the applied references do not teach or suggest a distance unit that adjusts a value of the two way travel time to correct for signal conditions causing a time difference in arrival of the range signal at the base station. (App. Br. 11-14; Reply Br. 2-4.) However, as the Examiner correctly found, Bevan teaches adjusting a value of travel time to correct for signal conditions. (Ans. 7, 19-20; FF 5-6.) Appellant argues that Bevan is concerned with errors in estimating bearing to the mobile station rather than range and there would be no reasonable expectation of success to use the teachings of Bevan in the system of Innes. (App. Br. 13-14; Reply Br. 2-4.) We do not agree. Although Bevan mainly is concerned with correcting errors in estimating bearing, Bevan also teaches sources of error in determining range -- including error mechanisms in measuring signal round-trip delay and techniques to compensate for those errors. (FF 5-6; Ans. 7, 19-20.)

Appellant further argues that the applied references do not teach or suggest a distance unit that determines a one way travel time by subtracting a random backoff parameter from the adjusted two way travel time and dividing that result by two. (App. Br. 11-14; Reply Br. 2-4.) However, as the Examiner correctly found, Innes teaches a delay σ for a GSM system and, as evidenced by the APA, a person of ordinary skill in the art would have recognized the random backoff parameter used in an IS-95 CDMA system to be the counterpart of the delay σ used in a GSM system. (Ans. 6, 18-19; FF 4.) In addition, the APA teaches that the mobile station informs the base station of the current value of the random backoff parameter (FF 4), and therefore the random backoff parameter may be viewed as a fixed quantity for a given calculation.

Although Appellant argues that the Examiner used improper hindsight in combining the references (App. Br. 9, 12-14), we do not agree. Instead, we find that Appellant has done no more than combine familiar elements according to known methods to yield predictable results.

Accordingly, we conclude that Appellant has not shown the Examiner erred in rejecting claim 31 under 35 U.S.C. § 103(a).

Dependent Claims 32-37

Although Appellant nominally argues the rejection of each of dependent claims 32-37 separately (App. Br. 15-17), the arguments presented do not point out with particularity or explain why the limitations of the dependent claims are separately patentable. Instead, Appellant merely asserts patentability of the claims for the same reasons advanced with respect to independent claim 31, quotes the additional limitation(s) recited by each dependent claim, states that Appellant traverses the Examiner's

findings, and summarily alleges patentability of the dependent claims because "Innes, the Admitted Prior Art, and Bevan, or any combination of them, do not appear to teach the elements as described with relation to all other elements of this and the parent claim."[3] (App. Br. 15-17.) Because Appellant has not persuasively rebutted the Examiner's prima facie case of obviousness for dependent claims 32-37 based on the teachings of Innes, the APA, and Bevan, we will sustain the rejection of claims 32-37 for the reasons discussed with respect to claim 31.

Independent Claim 38

Appellant nominally argues the rejection of independent claim 38 separately. (App. Br. 18.) However, Appellant merely asserts patentability of claim 38 for the same reasons advanced with respect to independent claim 31. (App. Br. 18.) Therefore, we will sustain the rejection of claim 38 for the reasons discussed with respect to claim 31.

Dependent Claims 39-44

Although Appellant nominally argues the rejection of each of dependent claims 39-44 separately (App. Br. 18-21), the arguments presented do not point out with particularity or explain why the limitations of the dependent claims are separately patentable. Instead, Appellant merely asserts patentability of the claims for the same reasons advanced with respect to independent claim 38, quotes the additional limitation(s) recited by each dependent claim, states that Appellant traverses the Examiner's

[3] We note that the quoted language in the arguments for claims 35-37 has a typographical error because the word "appear" has been omitted. (App. Br. 16-17.)

findings, and summarily alleges patentability of the dependent claims because "Innes, the Admitted Prior Art, and Bevan, or any combination of them, do not appear to teach the elements as described with relation to all other elements of this and the parent claim."[4] (App. Br. 18-21.) Because Appellant has not persuasively rebutted the Examiner's prima facie case of obviousness for dependent claims 39-44 based on the teachings of Innes, the APA, and Bevan, we will sustain the rejection of claims 39-44 for the reasons discussed with respect to claim 38.

Independent Claim 45

Appellant nominally argues the rejection of independent claim 45 separately. (App. Br. 21.) However, Appellant merely asserts patentability of claim 45 for the same reasons advanced with respect to independent claim 31. (App. Br. 21.) Therefore, we will sustain the rejection of claim 45 for the reasons discussed with respect to claim 31.

Dependent Claims 46-52

Although Appellant nominally argues the rejection of each of dependent claims 46-52 separately (App. Br. 21-24), the arguments presented do not point out with particularity or explain why the limitations of the dependent claims are separately patentable. Instead, Appellant merely asserts patentability of the claims for the same reasons advanced with respect to independent claim 45, quotes the additional limitation(s) recited by each dependent claim, states that Appellant traverses the Examiner's

[4] We note that the quoted language in the arguments for claims 42-44 has a typographical error because the word "appear" has been omitted. (App. Br. 20-21.)

findings, and summarily alleges patentability of the dependent claims because "Innes, the Admitted Prior Art, and Bevan, or any combination of them, do not appear to teach the elements as described with relation to all other elements of this and the parent claim."[5] (App. Br. 21-24.) Because Appellant has not persuasively rebutted the Examiner's prima facie case of obviousness for dependent claims 46-52 based on the teachings of Innes, the APA, and Bevan, we will sustain the rejection of claims 46-52 for the reasons discussed with respect to claim 45.

Independent Claim 53

With respect to independent claim 53, Appellant presents essentially the same arguments as presented with respect to independent claim 31. (App. Br. 25-30.) We reject those arguments for the same reasons discussed with respect to claim 31.

Accordingly, we conclude that Appellant has not shown the Examiner erred in rejecting claim 53 under 35 U.S.C. § 103(a).

Dependent Claims 54-55

Although Appellant nominally argues the rejection of dependent claim 54 separately (App. Br. 30-31), the arguments presented do not point out with particularity or explain why the limitations of the dependent claims are separately patentable. Instead, Appellant merely asserts patentability of claim 54 for the same reasons advanced with respect to independent claim 53, quotes the additional limitation recited by dependent claim 54, states that Appellant traverses the Examiner's findings, and summarily alleges

[5] We note that the quoted language in the arguments for claims 49-52 has a typographical error because the word "appear" has been omitted. (App. Br. 23-24.)

patentability of dependent claim 54 because "Innes, the Admitted Prior Art, and Bevan, or any combination of them, do not appear to teach the elements as described with relation to all other elements of this and the parent claim." (App. Br. 30-31.) Because Appellant has not persuasively rebutted the Examiner's prima facie case of obviousness for dependent claim 54 based on the teachings of Innes, the APA, and Bevan, we will sustain the rejection of claim 54 for the reasons discussed with respect to claim 53.

With respect to dependent claim 55, the Examiner found that Innes discloses a calculator unit (PLC 38) not located within the three base stations. (Ans. 14-15.) Appellant argues that this finding "seems to directly contradict the Examiner's earlier assertion that equated PLC 38 with a distance unit associated with a base station." (App. Br. 31.) We do not agree.

Innes teaches that the PLC 38 may be integrated with or separate from the base station (BTS 26). (FF 3.) Either way, the PLC 38 may be considered "associated with" the base station. The Specification does not provide any special definition for the claim term "associated with." The pertinent plain meaning of "associated" is "to join together; connect." *Webster's New World Dictionary Third College Edition* 83 (1994). The PLC 38 is electrically connected to, and therefore associated with, the base station (BTS 26) whether it is physically located within the base station or not. Therefore, we see no contradiction in the Examiner's findings.

Accordingly, we conclude that Appellant has not shown the Examiner erred in rejecting claim 55 under 35 U.S.C. § 103(a).

Independent Claim 56

Appellant nominally argues the rejection of independent claim 56 separately. (App. Br. 31-32.) However, Appellant merely asserts patentability of claim 56 for the same reasons advanced with respect to independent claim 53. (App. Br. 31-32.) Therefore, we will sustain the rejection of claim 56 for the reasons discussed with respect to claim 53.

Dependent Claims 57-60

Although Appellant nominally argues the rejection of each of dependent claims 57-58 separately (App. Br. 32-33), the arguments presented do not point out with particularity or explain why the limitations of the dependent claims are separately patentable. Instead, Appellant merely asserts patentability of the claims for the same reasons advanced with respect to independent claim 56, quotes the additional limitation(s) recited by each dependent claim, states that Appellant traverses the Examiner's findings, and summarily alleges patentability of the dependent claims because "Innes, the Admitted Prior Art, and Bevan, or any combination of them, do not appear to teach the elements as described with relation to all other elements of this and the parent claim."[6] (App. Br. 32-33.) Because Appellant has not persuasively rebutted the Examiner's prima facie case of obviousness for dependent claims 57-58 based on the teachings of Innes, the APA, and Bevan, we will sustain the rejection of claims 57-58 for the reasons discussed with respect to claim 56.

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[6] We note that the quoted language in the argument for claim 58 has a typographical error because the word "appear" has been omitted. (App. Br. 33.)

With respect to dependent claim 59, Appellant presents essentially the same argument as presented with respect to claim 56. (App. Br. 33.) However, Appellant's argument is not commensurate with the scope of claim 59. Claim 59 does not require a separate calculator unit, separate from the three base stations, that is capable of calculating a location of the mobile station. Instead, claim 59 merely requires the distance unit be capable of calculating a location of the mobile station. As the Examiner correctly found, Innes teaches this limitation. (Ans. 14; FF 3.)

Accordingly, we conclude that Appellant has not shown the Examiner erred in rejecting claim 59 under 35 U.S.C. § 103(a).

With respect to dependent claim 60, Appellant presents essentially the same argument as presented with respect to claim 56. (App. Br. 33.) We reject this argument for the same reasons discussed with respect to claim 56.

Accordingly, we conclude that Appellant has not shown the Examiner erred in rejecting claim 60 under 35 U.S.C. § 103(a).

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellant has not shown the Examiner erred in rejecting claims 31-60.

DECISION

The rejection of claims 31-60 for obviousness under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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